

1 an issue of intent, of what were you thinking, and I agree.
2 As I stated at the beginning, I think these accounting errors
3 are completely irrelevant to the entire issue. But we've now
4 -- we've been asked to provide a stipulation and reserve our
5 relevance argument with respect to the stipulation until,
6 until findings and conclusions and I'm certainly going to
7 honor the stipulation I reach. But since evidence has now come
8 in at the request of the other parties about these accounting
9 errors, certainly National Minority should be able to offer
10 testimony that says this, this -- these accounting errors were
11 not germane to our thought process when we used the
12 Commission's processes. That's what the, that's what the
13 abuse of process issue in the case is all about.

14 MR. COHEN: Do you wish to hear a response to that?

15 JUDGE CHACHKIN: Yes.

16 MR. COHEN: I beg your pardon?

17 JUDGE CHACHKIN: Pardon me?

18 MR. COHEN: Do you wish to hear a response?

19 JUDGE CHACHKIN: Yes.

20 MR. COHEN: Your Honor, let's put this in focus
21 here. What you now have is a joint stipulation which is in
22 the record. You now have TBN and NMTV voluntarily withdrawing
23 all the language --

24 JUDGE CHACHKIN: Well, before you start, let me --
25 do I understand that the stipulation sets forth all the

1 | accounting errors that took place?

2 | MR. COHEN: Correct.

3 | MR. TOPEL: And, Your Honor, if I --

4 | JUDGE CHACHKIN: And her testimony is -- now, is
5 | there any testimony by her that she has reviewed Mr. Morris'
6 | testimony?

7 | MR. COHEN: What there is in the record -- that used
8 | to be in the record before Mr. Topel withdrew it was
9 | statements along the lines that she'd been advised, she'd been
10 | advised, she'd been advised --

11 | MR. TOPEL: And, Your Honor, Mr. Cohen --

12 | JUDGE CHACHKIN: -- and that's what's in -- that was
13 | what was in the testimony which Mr. Topel has seen fit to
14 | withdraw.

15 | MR. TOPEL: Well, Your Honor, Mr. Cohen, Mr. Cohen
16 | started this discussion by saying that he didn't think that we
17 | were supposed to put her testimony in about this subject
18 | because it was all supposed to be in the joint stipulation and
19 | I responded --

20 | JUDGE CHACHKIN: That's not what, that's not what he
21 | said. That's not what he said. He objected to her, her
22 | stating her understanding of what took place. There was no
23 | objection to her knowledge and her involvement in what took
24 | place.

25 | MR. COHEN: Exactly. Precisely, Your Honor. That's

1 the distinction.

2 JUDGE CHACHKIN: So the paragraphs that you wish
3 stricken deal with her knowledge and involvement in the
4 mistakes, as I gather. But she says, "As I probably saw each
5 of these documents as written, I do not have a recollection of
6 doing so," and she was dropped by the telethon, etc., etc.,
7 etc. At least there she presents her explanation of the
8 matter in which these accounting errors might have occurred.
9 Now, all this has been stricken. Now, all you want in now is
10 her blanket statement that these accounting errors which
11 apparently she had some -- at least she, she -- if she didn't
12 say she didn't have any knowledge of, the question exists of
13 whether it was her responsibility to find out what was going
14 on if she was -- assumed the role that she purportedly had
15 when all these errors were made, and she's attempted to
16 explain all this and now you want all this stricken. So what
17 we have now is the blanket conclusion that none of these
18 accounting errors -- now she's saying, "I was unaware of the
19 accounting errors and gave them no consideration." Without
20 any of the factual material this is a conclusion, without any
21 of the factual material as to exactly what her involvement was
22 with respect to each of the documents in which accounting
23 errors occurred.

24 MR. TOPEL: Well, Your Honor, let me say I obviously
25 misunderstood Mr. Cohen's objection and --

1 JUDGE CHACHKIN: Have I stated what you --

2 MR. COHEN: Exactly.

3 MR. TOPEL: -- and I certainly -- we spend the time
4 to prepare this information so there would not be a hole in
5 the record on the subject and, if you'll permit me, I'll go
6 back and reoffer the paragraphs that provide the explanation.

7 JUDGE CHACHKIN: Apparently there was -- apparently
8 Mr. Cohen and Bureau counsel have wanted -- have reached some
9 kind of understanding about the paragraphs they would object
10 to.

11 MR. COHEN: Mr. Schonman is my spokesman.

12 JUDGE CHACHKIN: Mr. Schonman, let's go back to
13 there which is a half-hour ago, so --

14 MR. SCHONMAN: All right. The Bureau would have had
15 no objection to paragraph 79, no objection to paragraph 80.

16 MR. TOPEL: Well, Your Honor, let me say I formally
17 reoffer those.

18 JUDGE CHACHKIN: All right.

19 MR. SCHONMAN: All right. Then I'll rephrase it.
20 The Bureau has no objection to paragraphs 79, no objection to
21 paragraph 80, no objection of paragraph 81, no objection to
22 paragraph 82, no objection to paragraph 83. Now, paragraph 84
23 the Bureau would ask Your Honor to retain that portion which
24 begins with the words, "I paid little attention," and those
25 words begin about five lines from the bottom of paragraph 84.

1 MR. TOPEL: Okay. Your Honor, may I have a minute
2 to look at paragraph 84.

3 JUDGE CHACHKIN: Yes. Mr. Cohen, I gather you have
4 no objection?

5 MR. COHEN: I will accede to, to wiser men than I,
6 Your Honor.

7 JUDGE CHACHKIN: All right. Paragraph 79 through 83
8 which were withdrawn have now been put back into the exhibit
9 and the Bureau and Mr. Cohen, Glendale, have indicated they
10 have no objection to the receipt of those paragraphs.

11 MR. TOPEL: Right.

12 JUDGE CHACHKIN: So paragraph 79, 80, 81, 82 and 83
13 have been received.

14 MR. TOPEL: Your Honor --

15 JUDGE CHACHKIN: Now, the only question we're
16 dealing with 84 now.

17 MR. TOPEL: All right. I'm not what the objection.
18 If the witness is being asked to testify and explain about the
19 accounting errors, I'm not sure what the objection is to her
20 indicating that she learned what was in the Morris report
21 which is the first sentence of paragraph 84. I'll leave that
22 to Your Honor's judgment. I think that helps the flow of the
23 testimony and I don't think it's a matter in contention since
24 the stipulation is in the record, but I think it would make
25 the testimony more understandable. I think the next two

1 sentences --

2 MR. SCHONMAN: Your Honor?

3 JUDGE CHACHKIN: Yes.

4 MR. SCHONMAN: The Bureau is withdrawing its
5 objections to paragraph 84 and would be willing to allow 84 to
6 come in in its entirety.

7 JUDGE CHACHKIN: Mr. Cohen?

8 MR. COHEN: I'll go along with the Bureau.

9 JUDGE CHACHKIN: All right. Paragraph 84, no
10 objection to it. Paragraph 84 is received. Now we're dealing
11 with paragraph 85 and as far as paragraph 85 is concerned I
12 will strike that. That deals with conclusions, whether it
13 played a role or didn't play role in submissions. She stated
14 her knowledge and she stated the fact that she wasn't aware
15 until she was informed by Mr. Topel about it. Paragraph 85 is
16 just her conclusions and I'm going to strike all of paragraph
17 85. And as far as I can see the remaining paragraphs are
18 stated to be conclusions.

19 MR. TOPEL: That's right, Your Honor.

20 JUDGE CHACHKIN: Now, obviously if she was
21 testifying on the stand she couldn't give a summary. I don't
22 know what the purpose of it. Apparently it's a summary of all
23 the prior testimony.

24 MR. TOPEL: It's not entirely, Your Honor. Let me
25 say, as most contracts say, the headings in this contract are

1 not intended to, to impact the substantive provisions. Let me
2 state one example that's very important without having to look
3 through these paragraphs, although I think they are --

4 JUDGE CHACHKIN: Well, you'll have to tell me. My
5 inclination is to strike all of it. If you could tell me
6 where there's factual material --

7 MR. TOPEL: Okay.

8 JUDGE CHACHKIN: -- which is not included in prior
9 paragraphs, we'll consider that.

10 MR. TOPEL: Let me begin, Your Honor, I know your
11 position on this. You've stated this, but it is our view that
12 the witness does have a right to testify to her state of mind
13 about the statements that were made of her alleged wrongdoing
14 to indicate that she did not understand that they were wrong
15 and that she was attempting to proceed in good faith, so I
16 think -- I would -- I believe many of these statements are
17 relevant simply as state of mind.

18 JUDGE CHACHKIN: Well, I've, I've made my rulings on
19 this.

20 MR. TOPEL: Yes.

21 JUDGE CHACHKIN: I'm sure she said that in her
22 testimony. I don't know what a conclusion is. I don't know
23 if a witness who testifies on the stand gives conclusions.
24 Presumably whatever she had to say was in her testimony. This
25 is a summary of her conclusions, but this --

1 MR. TOPEL: No. It's, it's not, Your Honor. It's
2 additional testimony and let me go --

3 JUDGE CHACHKIN: Well, it says, "To conclude and
4 summarize, I want to address the statements," and it goes
5 through all of them, of the paragraphs.

6 MR. TOPEL: Well --

7 JUDGE CHACHKIN: It's not unusual to have the
8 testimony of a witness labeled Conclusions.

9 MR. TOPEL: Well, I'm learning. I've made a lot of
10 mistakes, Your Honor, at this hearing and, you know, I'll
11 certainly never do that again. But the substance of the
12 testimony is additional testimony.

13 JUDGE CHACHKIN: Where is there additional
14 testimony?

15 MR. TOPEL: Okay. Paragraph 88, "It is my
16 experience on non -- other non-profit boards on which I have
17 served that the board members typically retain their existing
18 employment." That's a statement of fact. It establishes her
19 state of mind that it was proper for her to be an employee of
20 TBN and still be on the Board of Directors of National
21 Minority Television, and she gives specific examples of boards
22 that she's been on.

23 JUDGE CHACHKIN: Any objection?

24 MR. COHEN: Well, Your Honor, I -- my objection is
25 as follows, is that you've got to look at this, at this

1 section as to what it is. It's an attempt, Your Honor, to
2 challenge the Designation Order. That's what it says it is
3 and that's what it tries to do. And that's -- you have -- to
4 call it irrelevant is being modest.

5 JUDGE CHACHKIN: Well, you're --

6 MR. COHEN: It's really a petition -- it's a sort of
7 an ill-founded petition for reconsideration of the Designation
8 Order which doesn't lie, but if it did lie, it certainly
9 wouldn't lie with you. You have no authority. The
10 Designation Order is not evidence in this proceeding. It's a
11 whole series of, it's a whole series of building straw men.

12 JUDGE CHACHKIN: It would have been one thing if she
13 would have stated at the time I was an employee and at the
14 time I became a member of this Board I didn't think it was
15 wrong because at that time I was on other boards and I
16 experienced other boards so my state of mind said it was all
17 right, but that is not what it says here.

18 MR. COHEN: Exactly.

19 MR. TOPEL: Well, it says --

20 JUDGE CHACHKIN: Here is an attempt here to answer
21 the Commission's Designation Order --

22 MR. COHEN: Exactly.

23 JUDGE CHACHKIN: -- but this is really a brief.
24 That's what it is. It's not testimony because she's not
25 relating this to any -- to the times in question. She's

1 making a blanket statement here that her experience at other
2 non-profit boards and she served on boards without a reference
3 that this is what she was thinking at the time that she agreed
4 to be on this board.

5 MR. TOPEL: Your Honor, if I may respond, the --
6 first of all, I don't believe the Hearing Designation Order
7 has made any statements of fact or conclusions about the
8 intent of Mrs. Duff or National Minority Television, and
9 that's what his hearing is for and she is testifying as to her
10 intent and the factual basis. And the paragraph contains the
11 sentence after she talks about her experience that, "It never
12 occurred to me that there was a requirement that I quit my job
13 on the Board." Now, never covers a time period and the time
14 period in this case, Your Honor, is broader than the time
15 period when she got on the board. There is a charge of
16 abusing process in applications in 1987, in '88 through 1990
17 and beyond. There's a charge of de facto control running all
18 the way up into the, into the present. Those charges are
19 based, as I understand the Designation Order, on the fact --
20 in part on the fact that she didn't quit her job at TBN.

21 JUDGE CHACHKIN: Well, I'm not going to receive any
22 of the conclusions so, frankly --

23 MR. TOPEL: Your Honor, there's --

24 JUDGE CHACHKIN: We've already had some 60 pages of
25 testimony. I assume that in those pages she could have stated

1 whatever the facts were. When it starts of, "To conclude and
2 summarize, I'd like to address the statements made -- the FCC
3 made when it designated the issues," makes it clear to me that
4 this is something prepared by the lawyer to argue the -- to
5 argue against the Commission's Designation Order. This is not
6 factual testimony. I am not receiving when she states
7 paragraph after paragraph, "As shown in paragraph 35 above,"
8 goes on to all kinds of legal statements, "refer to previous
9 tabs," that she refers to, all kinds of -- "paragraph 34, the
10 Bureau states." What is this? What questions were put to her
11 to answer these questions?

12 MR. TOPEL: The question is her intent. These are
13 facts. Were you intend -- were you intending to violate the
14 Commission's rules? What was your understanding? That's part
15 of --

16 JUDGE CHACHKIN: I'm afraid -- well, I'm sorry.
17 These conclusions will not be received. Paragraph 86 through
18 96 are rejected.

19 MR. TOPEL: Your Honor --

20 JUDGE CHACHKIN: I'm not going to consider it.

21 MR. TOPEL: There's one sentence that I would like
22 to ask you to consider because it -- it's a very important
23 statement of fact and -- if I can have one moment. On page
24 69, paragraph 95, Your Honor, the Hearing Designation Order
25 makes a statement that employment policies of National

1 | Minority Television which previously was known as Translator
2 | T.V., Inc. were made at joint meetings. This is -- was based
3 | on an inference drawn from some minutes and the witness wishes
4 | to testify as a fact that, in fact, Translator Television,
5 | Inc, did not adopt employment policies at those meetings and
6 | that was a misunderstanding of the minutes. That is an
7 | important fact that the witness has personal knowledge of.

8 | JUDGE CHACHKIN: I assume the minutes will so
9 | reflect.

10 | MR. TOPEL: Well, there --

11 | JUDGE CHACHKIN: It's only her statement what the
12 | minutes showed. The minutes will speak for themselves.
13 | That's the best evidence of what the minutes are.

14 | MR. TOPEL: Well, apparently they're confused. I
15 | mean, they're confusing and that's why we wanted to clarify
16 | it.

17 | JUDGE CHACHKIN: Well, how could she clarify the
18 | minutes? The minutes will say what they say and if the
19 | Commission was erroneous in it, the minutes will reflect the
20 | Commission was erroneous and you could point that out in your
21 | findings, that the minutes say what they say and they don't
22 | say what the Designation Order says. It's only her statement
23 | as to what the minutes say.

24 | MR. TOPEL: The problem is --

25 | JUDGE CHACHKIN: The best evidence is the minutes.

1 MR. TOPEL: But the problem, Your Honor, is that the
2 minutes are subject to different interpretations and she has
3 personal knowledge of what the correct interpretation is and
4 so she wishes to testify to it.

5 JUDGE CHACHKIN: How could the minutes be subject to
6 different interpretations?

7 MR. TOPEL: Because they --

8 JUDGE CHACHKIN: That's what it says.

9 MR. TOPEL: Because there were many companies at
10 these meetings and many of the companies adopted employment
11 policies. However, Translator T.V. had no employees at the
12 time, adopted no employment policies, but because of the
13 actions of the other entities at the meeting, the minutes
14 reflect or can be -- the minutes can be construed as
15 Translator T.V. having taken the same action as the other
16 entities when, in fact, it did not.

17 MR. COHEN: Your Honor, my view is that if the
18 witness wanted to say that, she had 68 pages to say it and it
19 should have been said earlier and it shouldn't be said in
20 these conclusions and in this summary. And I think that
21 you've been -- you've given this, this witness more latitude
22 and more discretion than I've ever seen and that she should be
23 bound by what she said in the first 68 pages or so.

24 MR. TOPEL: Well, I don't think it's an objection,
25 Your Honor, that it's on the wrong of the, of the testimony.

1 Either it's relevant or it's not. And I would ask that you --

2 MR. COHEN: I don't agree.

3 MR. TOPEL: -- that you at least leave in the
4 sentence which says, "While the minutes of the joint meetings
5 may appear confusing, at the time of those meetings which
6 occurred between 1982 and 1987 NMTV had no stations, had no
7 employees and adopted no personnel policies." I believe
8 that's factual testimony.

9 JUDGE CHACHKIN: What's the Bureau's position?

10 MR. SCHONMAN: We don't have a problem with what
11 Mr. Topel is, is explaining. There were joint board meetings
12 in which various actions were taken and to the extent that
13 Mrs. Duff can explain what actions relate to which companies
14 at the joint board meetings, the testimony is helpful.

15 JUDGE CHACHKIN: All right. I'll receive that one
16 sentence on page 69. The remainder of the "conclusions" will
17 not be received.

18 MR. SCHONMAN: Your Honor, which sentence in
19 particular are we talking about again?

20 JUDGE CHACHKIN: The main -- the sentence read by
21 Mr. Topel, "While the minutes of the joint meetings may appear
22 confusing, at the time of those minutes -- those meetings
23 which occurred between 1982 and 1987 NMTV had no stations, had
24 no employees and adopted no personnel policies." All right.
25 Want to deal with the tabs now? Any objections to Tab A?

1 MR. COHEN: No.

2 JUDGE CHACHKIN: Tab A is received. First of all,
3 TBF Exhibit 101 as modified is received in evidence.

4 (The document that was previously
5 marked for identification as TBF
6 Exhibit No. 101 was received in
7 evidence.)

8 JUDGE CHACHKIN: Tab A, there's no objections to Tab
9 A. That's received. Any objection to Tab B?

10 MR. COHEN: No.

11 JUDGE CHACHKIN: Tab B is received. Any objection
12 to Tab C?

13 MR. COHEN: No.

14 JUDGE CHACHKIN: Tab C is received. Any objection
15 to Tab D?

16 MR. COHEN: No.

17 JUDGE CHACHKIN: Tab D is received. Any objection
18 to Tab E?

19 MR. COHEN: No.

20 JUDGE CHACHKIN: Tab E is received. Any objection
21 to Tab F?

22 MR. COHEN: No.

23 JUDGE CHACHKIN: Tab F is received. Any objection
24 to Tab G?

25 MR. COHEN: No.

1 JUDGE CHACHKIN: Tab G is received. Any objection
2 to Tab H?

3 MR. COHEN: Excuse me, Your Honor.

4 JUDGE CHACHKIN: Tab H -- Tab G.

5 MR. COHEN: Could I just confer with my colleague
6 for a second?

7 JUDGE CHACHKIN: Yes.

8 MR. COHEN: Mr. Schauble brings a point to my mind.
9 I have not gone back and checked, but in some instances you've
10 stricken material and I don't -- I cannot represent to you now
11 --

12 JUDGE CHACHKIN: Well, let me indicate --

13 MR. COHEN: -- whether any of these tabs related to
14 the, to the material that was struck.

15 JUDGE CHACHKIN: Well, let me indicate when we're
16 talking about Commission documents filed with the Commission
17 they're only received for the purpose of taking official
18 notice.

19 MR. COHEN: Yes, and I have no objection to that --

20 JUDGE CHACHKIN: All right. Well, let me indicate
21 -- all right.

22 MR. COHEN: But I just wanted to point out you may
23 have stricken material where we had -- where tabs are attached
24 thereto.

25 JUDGE CHACHKIN: Well, look at the -- if you feel

1 that -- we'll go over the tabs here and you can tell me if you
2 object -- I'm only receiving them independently of whether
3 they're received -- they're referred to in the, in the
4 exhibit, if they have any independent value.

5 MR. COHEN: I understand, Your Honor.

6 JUDGE CHACHKIN: And if you feel -- Mr. Schauble
7 will explain something. You can explain this better than I.

8 MR. SCHAUBLE: On Tab G, Your Honor, which is --

9 JUDGE CHACHKIN: Well, that's the one we're on now,
10 yes.

11 MR. SCHAUBLE: This is a renewal application for
12 Trinity's station for KCBN-TV in Santa Anna, California and
13 that was referred to in paragraph 15 which has been stricken.

14 JUDGE CHACHKIN: Paragraph 15?

15 MR. SCHAUBLE: Yes.

16 JUDGE CHACHKIN: All right. We'll -- well, we'll
17 have to go over this thing, paragraph 15. What page is this?

18 MR. SCHAUBLE: Pages 13 and 14, Your Honor.

19 JUDGE CHACHKIN: Is what you're saying then that
20 this is -- there's no purpose of taking official notice of it?

21 MR. SCHAUBLE: Yes, Your Honor.

22 MR. TOPEL: Your Honor, I believe you should take
23 official notice of it. If the -- if an issue in this case is
24 going to be that it is improper for Mrs. Duff to be an
25 employee, a high level employee, of Trinity Broadcasting

1 Network, the fact that this was reported to the FCC that Jane
2 Duff would be Administrative Assistant to the President of
3 Trinity Network in an application that was filed with the FCC
4 at the same time as one of the applications that is the
5 subject to the charge that Mrs. Duff and Trinity -- and
6 National Minority Television was abusing the Commission's
7 process, if it is going to be argued that it was wrong for her
8 to be a high level employee of Trinity Broadcasting Network,
9 it is proper to allow the showing to be made that there as no
10 intent to hide that fact from the FCC. If the rulings are
11 that it is irrelevant that she is an employee of Trinity
12 Broadcasting Network, we can conduct our case on that basis.

13 MR. SCHONMAN: Your Honor?

14 JUDGE CHACHKIN: Yes. Yes, Mr. Schonman?

15 MR. SCHONMAN: Would you mind if we go off the
16 record for ten minutes, please? We'd like to speak with
17 Glendale counsel.

18 JUDGE CHACHKIN: All right. We'll go off the
19 record.

20 (Off the record.)

21 JUDGE CHACHKIN: Let's go back on the record.

22 MR. COHEN: My lawyer here will speak for us.

23 JUDGE CHACHKIN: All right. This is in regard to
24 all the tabs?

25 MR. SCHAUBLE: Yes, Your Honor.

1 JUDGE CHACHKIN: All right. Tell me which ones you
2 object to. Tab H?

3 MR. SCHAUBLE: Tab G, Your Honor.

4 JUDGE CHACHKIN: Tab G.

5 MR. SCHAUBLE: Tab H.

6 JUDGE CHACHKIN: Do you object to it or you don't
7 object?

8 MR. SCHAUBLE I have objection to.

9 JUDGE CHACHKIN: All right. Well, let me -- all
10 right. Tabs G and H you object to. Which ones? G and H did
11 you say?

12 MR. SCHAUBLE: Yes.

13 JUDGE CHACHKIN: What's the basis of your objection?

14 MR. SCHAUBLE: The basis for objection, Your Honor,
15 is that this relates to -- Mr. Topel made the, made the
16 argument as to why he thought this was relevant, but I think
17 Your Honor already considered and rejected this argument with
18 -- in rejecting a portion of the text that, that refers to
19 these tabs. These are not matters that relate to NMTV's --
20 there's no information based upon these tabs that you can get
21 relating to NMTV's affairs. The following are concerning KTBN
22 which is a Trinity station. And Tab H which refers to the
23 address of the corporation, Your Honor considered the
24 arguments and struck the underlying text as irrelevant, and
25 under that basis I believe those tabs have no independent

1 relevance.

2 JUDGE CHACHKIN: Now, the question is will they be
3 relevant to the testimony of other, other witnesses? I mean,
4 you have reviewed the testimony of other witnesses.

5 MR. COHEN: We don't know. I'll be truthful with
6 Your Honor. I can't make a representation.

7 JUDGE CHACHKIN: All right.

8 MR. COHEN: I don't think Mr. Schauble can either.

9 JUDGE CHACHKIN: Well, I think the best thing --

10 JUDGE CHACHKIN: If I could make a representation to
11 you, I would, but I would never say something --

12 JUDGE CHACHKIN: All right.

13 MR. COHEN: -- to you that I don't know to be a
14 fact.

15 JUDGE CHACHKIN: Well, the only thing I could say
16 is, Mr. Topel, you could reoffer these tabs if you can through
17 other witnesses as we go along.

18 MR. TOPEL: I'd like to make a suggestion and --

19 JUDGE CHACHKIN: What is that?

20 MR. TOPEL: -- request a qualification. To the
21 extent that documents are documents filed with the Commission,
22 my suggestion would be that all parties' submissions of
23 documents filed with the Commission be received and you rule
24 on their relevance or weight based on the arguments that are
25 submitted to you in findings and conclusions.

1 JUDGE CHACHKIN: Well, they're received for what
2 purpose, just for taking official notice that they were filed
3 or what?

4 MR. TOPEL: Yes, and that they say what they say.

5 JUDGE CHACHKIN: Well, that's different.

6 MR. COHEN: I don't think -- Your Honor, I don't
7 think that, I don't -- and I say this respectfully. I don't
8 think Mr. Topel's point is well taken because, as we all know,
9 just to take official notice is of no significance. That's
10 just a means of proceeding. You've got to take official
11 notice of a fact that's relevant or information that's
12 relevant. And so, as Mr. Topel suggests, we would really
13 defer until the findings the arguments on relevance and I
14 don't think that's helpful.

15 JUDGE CHACHKIN: I'm not -- I don't propose to do
16 that.

17 MR. SCHONMAN: Your Honor, then --

18 JUDGE CHACHKIN: You have to take official notice of
19 something that's only demonstrated to me to be relevant. Yes?

20 MR. SCHONMAN: I'd just like to say on behalf of the
21 Bureau that the Bureau has no objection to this -- to Tab G.

22 JUDGE CHACHKIN: To Tab G.

23 MR. TOPEL: And, Your Honor, I would like to request
24 a clarification, as I stated earlier, of what the basis for
25 the ruling is. If the ruling is that the fact that Mrs. Duff

1 is an employee of the Trinity Broadcasting Network is
2 irrelevant to the control issue, which is what I understand
3 your ruling to be --

4 JUDGE CHACHKIN: I didn't say that.

5 MR. TOPEL: Okay. Well, then --

6 JUDGE CHACHKIN: I didn't say that. I -- what I
7 said was standing alone it may not prove control or lack of
8 control, but coupled with other factors you may have a
9 different situation entirely.

10 MR. TOPEL: Then --

11 JUDGE CHACHKIN: And that's -- when you talked about
12 -- when you brought up the subject that you informed the
13 Commission of the fact she was employed, I'd say standing
14 alone it may not demonstrate lack of control, but you have to
15 consider all other factors.

16 MR. TOPEL: Then I would respectfully submit,
17 Your Honor, that the fact that Trinity disclosed to the FCC
18 that she was an employee of Trinity simultaneously with the
19 pendency of one of the applications that Trinity is now
20 accused of having used -- to abuse the Commission's processes
21 is part of all the facts and circumstances that you should
22 consider as to Trinity's intent to deceive the Commission.

23 JUDGE CHACHKIN: Well, I don't see -- I don't think
24 I have any problem with what you just said.

25 MR. TOPEL: Well, then that's what I -- that's why I

1 ask you to take official notice of Tab G which on page --
2 which reports Mrs. Duff's position on page 8 for Trinity as
3 the person responsible for equal employment and Administrative
4 Assistant to the President. There's an indication that -- on
5 page 6 that notices should be sent to her at the Trinity
6 address and Tab H indicates that Trinity certainly was not
7 hiding that that was its address from the Commission. And I'm
8 not arguing here, Your Honor, that this is dispositive of the
9 case, but it -- I believe you correctly said you should
10 consider all of the circumstances, and the fact that there was
11 a disclosure of the fact that she was an employee located at
12 the Trinity headquarters at the time that Trinity is accused
13 of abusing the Commission's process is one of the factors that
14 you should consider in weighing Trinity's intent.

15 MR. SCHAUBLE: Your Honor, we --

16 JUDGE CHACHKIN: Yes.

17 MR. SCHAUBLE: I believe that this is argued --
18 Mr. Topel made the -- these same arguments extensively
19 yesterday in considering -- in connection with the text and
20 Your Honor rejected these arguments, I believe, on the basis
21 that this mere disclosed, mere disclosure of the name and
22 title by itself had no weight and added nothing to the record,
23 and I don't see the purpose of this reargument here.

24 JUDGE CHACHKIN: I adhere to the position I took
25 yesterday. The mere fact that she disclosed her position has

1 no bearing, it seems to me, on the question of intent. She
2 didn't disclose -- I don't know what the facts are going to
3 develop here. She didn't disclose any relationship between
4 TBN and NMTV or what role she was playing or the role she was
5 not playing or any of the other underlying facts which the
6 Commission would have had to know to make some kind of
7 judgment of whether a control question existed. So I don't
8 think the fact that she disclosed her employment, and
9 obviously she may have disclosed her employment because she
10 didn't want to be faced with a misrepresentation issue which
11 may end up to do with control. I mean, if she didn't -- if
12 the application called for that information and she didn't
13 disclose it her motive, one could argue, may have been that
14 she didn't want to be faced with a misrepresentation issue
15 rather than she wanted to demonstrate that she was not hiding
16 from the Commission the question of control. I mean, one
17 could argue about what the motive was. But I don't see how
18 the mere mention of the fact that she was -- stated that she
19 was employed as she was required to by the application
20 provided any information to the Commission as to whether or
21 not -- what the situation was as to who was controlling NMTV.
22 Now, that's not what I said before. I said to determine the
23 question of control. I said standing alone the fact that she
24 was an employee, an Administrative Assistant, would not be
25 dispositive of whether there was -- of who controlled NMTV but

1 certainly it would be a factor to be considered along with any
2 other factors in making that determination, but that's not the
3 same thing as, as disclosure in the application.

4 MR. TOPEL: I understand, Your Honor, and the
5 discussion helps me understand your ruling. I would like to
6 make two points about what you said. First of all, the form
7 in which Mrs. Jane -- Mrs. Duff's position is indicated is
8 discretionary in terms of which employee the licensee
9 designates to have a particular responsibility, so there was
10 -- someone else could have had this position if NMTV or TBN
11 had a guilty state of mind and wanted to hide Mrs. Duff from
12 the Commission. But, secondly, the form -- the place where
13 she's identified is in response to a question as to who is the
14 person -- the particular official who has overall
15 responsibility for equal employment opportunity at the
16 station. Now, the other parties to this case have exchanged
17 exhibits showing that Mrs. Duff was performing that function
18 and attempting to create an inference that that somehow
19 relates to her activities at NMTV and that if she's doing it
20 for one company and she's doing it for the other company that
21 there's a relationship and a control. And, in light of that,
22 I don't see how that evidence could be received if NMTV and
23 Trinity are denied the opportunity to indicate that before
24 NMTV was granted its application on file at the Commission was
25 the fact that Mrs. Duff had that role. And, again, the point